

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND CASE NO 40 OF 2018

**DONART KAIZ ALWATANI1ST
PLAINTIFF**

**FREDRICK URASSA 2ND
PLAINTIFF**

(As Administrator of the estate of the land PENINA URASSA)

VERSUS

**THE COMMISSIONER FROM LANDS 1ST
DEFENDANT**

**THE HON ATTORNEY GENERAL2ND
DEFENDANT**

**SELEMAN YUSUFU 3RD
DEFENDANT**

JUDGMENT

24th June & 31st August 2022

F. H. MAHIMBALI, J.

In this suit case, it is land dispute that involves a parcel of land at Tegeta area surveyed by Commissioner for Lands and allocated it to the 3rd defendant. However, the 2nd plaintiff claims the surveyed land as originally belonging to his deceased sister Penina Urasa who died intestate. The said Penina Urassa during her life time had purchased the said land

on 21/02/1986 from one Mariam Mohamed Chikomezi (PE2 exhibit).

That later on (after the death of the said Penina Urassa), Mr. Fredrick Urassa being administrator of the estate of the late Penina Urassa sold the same parcel of land to the plaintiff Mr. Donalt Kaiz Alwatani. By that time of sale, the land plot, it had already been surveyed by the Commissioner for Lands as per land project in Tegeta and he was given the plot number 1384 Block E Tegata and that he was to make a follow up to the Commissioner for Lands in order to get the certificate of title. As it delayed, he wrote a letter to the Commissioner for Lands that he had already sold the plot to Mr. Donart Kaiz Alwatan and that the name in the said certificate be written that of Mr. Donart Kaiz Alwatan.

Believing that everything was right and that Mr. Donart Kaiz Alwatan (first plaintiff) was in peaceful enjoyment, Mr. Fredrick Urassa (2nd plaintiff) wondered after a 10 years lapse, Mr. Donart Kaiz alwatan (first plaintiff) informed him that he had been sued by the 3rd defendant claiming that the said land belonged to him. Thus, the basis of this suit.

The 2nd plaintiff claims that the land in dispute (plot no 1384 Block E, Tegeta Area) now belongs to the 1st plaintiff. That the Land Registry be rectified so that the names of Donart Kaiz Alwatan be entered in place of the 3rd defendant as the latter acquired the suit land unlawfully.

On the other hand, the 3rd defendant established that in 1991 he saw public notice of sale of residential plots in Tegeta. He was interested of the said plots. He applied for one, paid it and was later given certificate of Title with Reg. No 44953 for plot No 1384, Block E (exhibit DE1). Therefore, the plot is his.

Following the contest of the parties as per their pleadings, four issues were preferred.

1. Whether the plaintiffs were lawful owners of the suit premises prior to its allocation to the 3rd defendant.
2. Whether during the allocation of the suit premises to the 3rd defendant, there was any development on the suit premises done by indigenous natives.
3. If response to the third issue is in affirmative, whether the allocation of the suit premises to the 3rd defendant was in accordance with the law.
4. To what reliefs are the parties entitled to:

In consideration to the testimony of PW1, PW2 PW3 and PW5 and exhibits (PE2, PE4 survey plan for Block E Tegeta), it is evidently clear that the said area when was being surveyed in 1990s had already been in occupation of Penina Urassa. As per PE2 exhibit, Penina had obtained that parcel of land from Mariam Mohamed Chikomezi in 1986. She built her residential house. The said Penina later died in 1999 where Fredrick Urassa (1st plaintiff) became the administrator of her estate who then sold it in 2000 to the 1st plaintiff. So, by the time of allocating land to the 3rd defendant, by the Commissioner for Lands in 1991, strictly speaking there was no legal process done to acquire that land from Penina who was in occupation of it since 1986. Considering further the testimony of PW5 when doing land Survey for Block E in Tegeta, he established that Plot No 1384 had in it an existing structure. This then denounces the claims of the 3rd defendant that when he was allocated the said land, it was just a bare land.

The defense testimony (DW1 and DW2) are at per. Whereas DW1 says he applied for that land in 1991 and was granted right of occupancy in 1995, DW2 (land officer) testified the same. She added that the said surveying of Tegeta area

was for the project called “*site and services.*” DW2 testified further to the effect that the 3rd defendant was lawfully allocated that land after the Commissioner for Lands had acquired that land from the indigenous people of Tegeta area. When asked as to who was the native person who originally owned that land prior to Penina, DW2 just replied that as per their register of residents of Tegeta by 1980s, there was neither name of Penina nor Mariam Mohamed Chikomezi. However, she could not name that occupant prior to granting of the land to the 3rd defendant. More surprisingly, the purported register of land for residents of Tegeta prior to the project of “*site and services*” was not tendered in court for satisfaction of the said assertion. Was that fact then proved?

With this finding, considering also the evidence of PW2 (Ten cell leader), PW3 (son of the said vendor to Penina and also witness of it), I am persuaded to believe that by the time 3rd defendant was being allocated the said land by the Commissioner for Lands, the said parcel of land was being lawfully owned by Penina Urassa.

The law is, where someone is in lawful occupation of land, no valid right of occupancy can be offered to anyone else over

the same land unless the provisions of the Land Acquisition Act, Cap 118 R. E. 2019 have been complied with. (see section 3 (1)b and (a) of the Land Act, Cap 113 R. E. 2019). See also the priority principle as enumerated in the case of **Colonel Kashmiri vs Maginder Singh Mathain** (1988) TLR 162.

Whether there was any development of the suit land during the allocation of the said land to the 3rd defendant. The third defendant denounces there being any existing house in the said plot. He built it himself upon being granted the certificate of occupancy, in respect of that plot. On the other hand, the testimony of PW1, PW2, PW3 and PW5 and exhibit PE4 provide for a different assertion. PW2 testified well how they had been living in that house built by his sister. PW1-purchaser testified how he purchased and made further developments. During the survey of the said area, PW5 being an employee with the Ministry of Lands, testified that during the said survey process of the said area, they encountered various existing structures in which they labelled them specifically. With exhibit PE4, he established that plot no 1384, had an existing structure by that year of 1991. Therefore, issue number two is answered in affirmative that there was

already development of the said suit land prior to the allocation of it to the third defendant.

Having responded issue no 2 in affirmative, then the next question is whether the allocation of the suit premises to the 3rd defendant was lawful and in accordance to the law.

In essence according to the law, all land is public land but vested to the President as only Trustee. By being public land means it is the people who are owning and using the said land. The Commissioner for Lands as per law, has full mandate to the public land which is unoccupied by people. If the same is occupied by people, be it under customary right of occupancy or deemed customary right of occupancy, for that land to be used for government uses such as plot projects, it must first be acquired as per law (The land Acquisition Act). Short of that, the Commissioner for Lands has no such privilege rights of using or taking peoples lands under the umbrella of trusteeship of the President of the United Republic of Tanzania. This is the essence of section 4 of the Land Act, Cap 113 R. E. 2019 read together with section 3 (1) (b) (c) (g) and (h) of the Village Land Act, Cap 114 R. E. 2019. In the case of **Mulbadaw Village Council and 67 others vs National Agricultural and Food**

Corporation (1984) TLR 19, the court made it clear, that when one lawfully possesses land, can only be deprived of their land by due operation of law. Otherwise, the provision of the Land Acquisition Act, have to be fully followed in acquiring land belonging to people. The law is, where someone is in lawful occupation of land be it under customary law or deemed customary law, no valid right of occupancy can be offered to anyone else over the same land unless the provisions of the land Acquisition Act have been complied with.

Therefore, as the existing right and recognised long standing occupation of Mariam Mohamed Chikomezi of Tegeta area was not extinguished by any authority, she had the right to pass it to Penina as done. Similarly, then, Mr. Donard Kaiz Alwatani lawfully purchased it from Penina Urassa through her sibling Mr. Fredrick Urassa the administrator of the deceased estate. That said the Commissioner for Lands, legally speaking had not properly allocated that land to the 3rd defendant without first acquiring the long-standing occupation of the original and subsequent owners. The allocation to the third defendant was therefore unlawful and unacceptable in the eyes of the law.

As to what reliefs are the parties entitled to, I have critically digested to the testimony of the case for both parties in this case. However, having disposed all the issues of the case, I think the following reliefs are important to order:

- 1) The 1st defendant (Commissioner for Lands) is hereby directed to correct and rectify the mistakenly allocated land to the third defendant and in his place, register the name of the first plaintiff who lawfully purchased it.
- 2) If need be, the 3rd defendant be fully compensated by being allocated with another plot of land.
- 3) In the circumstances of this case, parties shall bear their own costs.

That said, the plaintiffs' case hereby succeeds to the extent explained.

It is so ordered.

DATED at DAR ES SALAAM and MUSOMA this 31st August
2022



F.H. Mahimbali

Judge

Court: Judgment delivered this 31st August, 2022 by video link, connected from Musoma High Court and Land Division - Dar es Salaam in the presence Mr. Luoga, state attorney for the 1st and 2nd defendants, Mr. Gidion Mugo, RMA. The plaintiff and 3rd Defendant are absent though dully notified.

Right to appeal fully explained to any aggrieved party.

F.H. Mahimbali

Judge